

of this section—*quaere*, as to whether the appellant could raise question of violation of such restriction. Law applicable to owners along non-navigable streams has no application to navigable streams. Title to improvements, when made, may be severed from that of the mainland. How the improvements may be made. *Goodsell v. Lawson*, 42 Md. 370. See also *Western Maryland T. R. Co. v. Baltimore*, 106 Md. 568; *Hodson v. Nelson*, 122 Md. 335.

Improvements erected by an adjacent owner, or his tenant, under this section, belong to such owner, although they extend further than law permits; while they may be abated by proper proceedings to extent that they are unlawful, the ownership cannot be wrested from proprietor. Ejectment against United States. *The Edmondson Island Case*, 42 Fed. 15.

Proprietor's right to improve out into a river, *until actually availed of*, is subject to right of United States to use soil under water in aid of navigation without such proprietor's consent and without compensation. The privilege conferred by this section must be exercised subject to public right of navigation and usual necessary aids thereto. *Hawkins Point Light-House Case*, 39 Fed. 87.

When waters are "navigable." No state can restrict jurisdiction which admiralty would otherwise have. *Maryland v. Miller*, 180 Fed. 804.

What kind of improvements can be made? Until improvements are made, adjacent owner has no interest in land under the water, except a right to make improvements. *Western Maryland T. R. Co. v. Baltimore*, 106 Md. 565; *Hess v. Muir*, 65 Md. 596 (involving the bedding of oysters); *Maryland v. Miller*, 180 Fed. 804; *Hodson v. Nelson*, 122 Md. 335.

The rights secured by this section and sections 46 and 48, are valuable, and if invaded or their enjoyment obstructed, the owner is entitled to the usual redress. *Gartee v. Baltimore*, 53 Md. 432; *Goodsell v. Lawson*, 42 Md. 371. See also *B. & O. R. R. Co. v. Chase*, 43 Md. 23.

Where improvements are extended beyond original city limits, the latter are also extended and such improvements are taxable. *Western Maryland T. R. Co. v. Baltimore*, 106 Md. 565.

The power of the legislature to pass this and the preceding section, referred to by way of example. *Phipps v. State*, 22 Md. 389.

In a case where the ownership of a wharf was in question, this section was held to have no application. *Albert v. State*, use of *Ryan*, 66 Md. 336.

The rights conferred by this section are in no sense analogous to the privilege granted by article 72, section 50 (dealing with private oyster beds). *Handy v. Maddox*, 85 Md. 552.

For cases dealing with the subject of this section prior to its adoption see *Baltimore v. McKim*, 3 Bl. 453; *Casey v. Inloes*, 1 Gill, 432; *Hammond v. Inloes*, 4 Md. 173; *Wilson v. Inloes*, 11 G. & J. 359; *Giraud v. Hughes*, 1 G. & J. 265; *B. & O. R. R. Co. v. Chase*, 43 Md. 23.

Cited but not construed in *Spencer v. Patten*, 84 Md. 426; *Hill v. United States*, 149 U. S. 593; *Ranstead v. The William H. Brinsfield*, 39 Fed. 215.

See notes to secs. 46 and 48 (this art.).

Limitations upon right of defendants to improve out into bed of river, correctly stated in instructions. *Marchant v. Baltimore*, 146 Md. 528.

As to riparian rights in connection with fish and fisheries, see art. 39, sec. 24.

An. Code, 1924, sec. 48. 1912, sec. 49. 1904, sec. 49. 1888, sec. 46. 1862, ch. 129, sec. 39.

**48.** No patent hereafter issued out of the land office shall impair or affect the rights of riparian proprietors, as explained and declared in the two preceding sections; and no patent shall hereafter issue for land covered by navigable waters.

Secs. 46, 47 and 48 referred to in holding valid ordinances of Baltimore City establishing lines beyond which wharf may not extend. Riparian owners not deprived of rights thereby. *Cahill v. Baltimore*, 173 Md. 454.

Under the express language of this section, if water is navigable a patent may not issue; when water is navigable. A caveator need not prove that he has any interest in alleged vacant land; it is enough if he shows that state has no title. *Prima facie* riparian owner on non-navigable stream owns to middle thereof. Alleged distinction between rights of riparian owners in non-navigable streams and in a natural pond or lake. *Linthicum v. Shipley*, 140 Md. 98.

The right of state under act of 1745, ch. 9, to intercept riparian owner's right to make improvements into water before he had made such improvements, by a grant of land covered by water, was taken away by this section. Cases dealing with act of 1745, ch. 9. *Brady v. Baltimore*, 130 Md. 510.

A violation of last clause of this section does not render a patent *wholly* void. *Tyler v. Cedar Island Club*, 143 Md. 217.

A patent was refused on appeal by virtue of this section, although all proceedings were had and the patent granted below, prior to its adoption. This section is of public interest, and courts will act on it whether parties rely upon it or not. Last clause of